

Constitutional Court Ruling No. 4/2559 (2016)

Ombudsman

Applicant

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Respondent

Constitution (Interim), B.E. 2557 (2014), section 4;
Draft Constitutional Referendum Act, B.E. 2559 (2016), section 61 paragraph one (1),
paragraph two, paragraph three and paragraph four.

Section 61 paragraph two of the Draft Constitutional Referendum Act, B.E. 2559 (2016) provided a description of an act which was deemed as an offence of instigating disturbances to cause voting disorder under section 61 paragraph one (1). The provision stated that an act of distributing texts, pictures or sound by newspaper, radio, television, electronic media or any other channel which was a misrepresentation of the truth or contained violence, aggressive, rude, inciting tone or threat, aimed at preventing an eligible voter from exercising the right to cast a vote or causing such person to vote in a certain way, or to abstain from voting, was a criminal offence. The provision defined the offence under section 61 paragraph one (1) for greater clarity. It provided a framework for the exercise of powers by a state official when determining whether a certain action was an offence giving rise to criminal liability under section 61 paragraph three or paragraph four. The circumstances of such person's actions and basic intent had to be considered in conjunction with the general intent and the special intent. As for the use of terms "violent", "aggressive", "rude", "inciting" or "threatening", those terms were clear but not specific. Hence, this was not a case of a law providing an offence and criminal penalty by the use of vague or unclear language. This Act did not prohibit the expression of opinion or distribution of opinion relating to voting in the referendum, provided that such act was done in good faith within the legislative framework, and there shall not be an intent to discourage an eligible voter from exercising the right to vote or to vote in a particular way or to abstain from voting. Also, the act shall not cause disturbances or affect overall social peace and safety to ensure that referendum on the Draft Constitution proceeded in an orderly manner and to protect the liberties of the electorate to exercise their votes independently. Section 61 paragraph two was a provision which restricted the rights and liberties to express opinions only to the extent of necessity to preserve state security and protect rights and liberties of eligible voters in the referendum. The provision was neither contrary to nor inconsistent with section 4 of the Constitution and therefore did not raise problems of constitutionality.